

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KATHLEEN ESPINOSA, et al.,

No. C 06-04686 JSW

Plaintiffs,

**COURT'S INTENDED SPECIAL
VERDICT FORM**

v.

CITY AND COUNTY OF SAN FRANCISCO,
et al.,

Defendants.

1. Do you find that Minor Asa I. Sullivan ("Minor Sullivan") proved by a preponderance of the evidence that the tenants, Jarrett Schank and Bryant Gudor, did not abandon their lease at 2 Garces Drive before June 6, 2006?

Answer "Yes" or "No": _____

If you answered "Yes" to Question 1, please proceed to Question 2. If you answered "No" to Question 1, please proceed to Question 6.

2. Do you find that Minor Sullivan proved by a preponderance of the evidence that Officer Morgado did not have reasonable grounds to believe that 2 Garces Drive had been abandoned and/or that the landlord, or an authorized agent of the landlord, did not consent to the entry and search?

Answer "Yes" or "No": _____

If you answered "Yes" to Question 2, please proceed to Question 3. If you answered "No" to Question 2, please proceed to Question 6.

1 3. Do you find that Minor Sullivan proved by a preponderance of the evidence that
2 Mr. Sullivan had a legitimate expectation of privacy at 2 Garces Drive on June 6, 2006?

3 Answer "Yes" or "No": _____

4 **If you answered "Yes" to Question 3, please proceed to Question 4. If you answered "No"**
5 **to Question 3, please proceed to Question 6.**

6
7 4. Do you find that Minor Sullivan proved by a preponderance of the evidence that
8 the Officer Morgado did not have reasonable grounds to believe that there was an emergency at
9 hand and there was an immediate need for their assistance for the protection of life or property
10 and/or that the search's scope and manner were not reasonable to meet the need.

11 Answer "Yes" or "No": _____

12 **If you answered "Yes" to Question 4, please proceed to Question 5. If you answered "No"**
13 **to Question 4, please proceed to Question 6.**

14
15 5. Do you find that Minor Sullivan proved by a preponderance of the evidence that
16 Officer Morgado deprived Mr. Sullivan of his rights under the Fourth Amendment to the
17 Constitution to be free from an unreasonable search when they entered and searched 2 Garces
18 Drive?

19 Answer "Yes" or "No": _____

20 **Please proceed to Question 6.**

21
22 6. Do you find that Minor Sullivan proved by a preponderance of the evidence that
23 Officer Morgado deprived Mr. Sullivan of his rights under the Fourth Amendment to the
24 Constitution to be free from excessive force when he pointed his firearm at Mr. Sullivan?

25 Answer "Yes" or "No": _____

26 **Please proceed to Question 7.**

1 7. Do you find that Minor Sullivan proved by a preponderance of the evidence that
2 the Defendant Officers deprived Mr. Sullivan of his rights under the Fourth Amendment to the
3 Constitution to be free from excessive force when they when they used deadly force against Mr.
4 Sullivan?

5 Answer "Yes" or "No" for Officer Alvis: _____

6 Answer "Yes" or "No" for Officer Keesor: _____

7 **Please proceed to Question 8.**

8
9 8. **If you answered "No" to Questions 5 and 6, skip this Question and please**
10 **proceed to Question 9.** If you found that Officer Morgado violated Mr. Sullivan's Fourth
11 Amendment rights by the entry and search of 2 Garces Drive or by the pointing of firearms at
12 Mr. Sullivan, do you find that Minor Sullivan proved by a preponderance of the evidence that
13 Officer Morgado intentionally or recklessly provoked a violent response from Mr. Sullivan
14 when he violated his Fourth Amendment Rights.

15 Answer "Yes" or "No" : _____

16 **Please proceed to Question 9.**

17
18 9. Do you find that Minor Sullivan proved by a preponderance of the evidence that
19 the Defendant Officers were negligent in their use of deadly force against Mr. Sullivan?

20 Answer "Yes" or "No" for Officer Alvis: _____

21 Answer "Yes" or "No" for Officer Keesor: _____

22 **If you answered "Yes" to Question 9 as to either Officer Alvis or Officer Keesor, please**
23 **proceed to Question 10. If you answered "No" to Question 9 as to both Officer Alvis or**
24 **Officer Keesor, please proceed to Question 12.**

25
26 10. Do you find that the Defendant Officers proved by a preponderance of the
27 evidence that Mr. Sullivan was negligent and Mr. Sullivan's negligence was a substantial factor
28 in causing his death.

1 Answer "Yes" or "No" _____

2 **Please proceed to Question 11.**

3
4 11. What percentage of fault do you attribute to each person below? Your answer
5 may be zero.

6 Officer Alvis: _____

7 Officer Keesor: _____

8 Mr. Sullivan: _____

9 **Please proceed to Question 12.**

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11 12. If you found that Officer Morgado violated Mr. Sullivan's Fourth Amendment
12 rights by the entry and search of 2 Garces Drive and/or by the pointing of firearms at Mr.
13 Sullivan, and/or that Officer Alvis and/or Officer Keesor violated Mr. Sullivan's Fourth
14 Amendment rights by the use of deadly force against him, do you find that Minor Sullivan
15 proved by a preponderance of the evidence that the Defendant Officers intentionally interfered
16 with or attempted to interfere with Mr. Sullivan's civil rights by threatening or committing
17 violent acts.

18 Answer "Yes" or "No" as to Officer Morgado and the entry and search of 2 Garces Drive:

19 _____

20 Answer "Yes" or "No" as to Officer Morgado and the pointing of firearms at Mr. Sullivan:

21 _____

22 Answer "Yes" or "No" as to Officer Alvis and the use of deadly force:

23 _____

24 Answer "Yes" or "No" as to Officer Keesor and the use of deadly force:

25 _____

26 **Please proceed to Question 13.**

13. If you answered "Yes" to Questions 5, 6, 7, or 8 as to any Defendant Officer, what damages do you find that Minor Sullivan, as the successor-in-interest to Mr. Sullivan, proved by a preponderance of the evidence were caused by the Constitutional violation(s).

Damages : _____

If you answered "Yes" to Questions 5, 6, 7, or 8 as to any Defendant Officer, but found that Minor Sullivan failed to prove by a preponderance of the evidence that any actual damages were caused by the Constitutional violation(s), you shall return an award of nominal damages not to exceed one dollar.

Please proceed to Question 14.

14. If you answered "Yes" to Question 12, what damages do you find that Minor Sullivan, as the successor-in-interest to Mr. Sullivan, proved by a preponderance of the evidence were caused by the violation.

Damages : _____

Please proceed to Question 15.

15. If you answered "Yes" to Question 9, what damages do you find that Minor Sullivan, as an individual, proved by a preponderance of the evidence were caused by the Defendant Officers' conduct.

Damages : _____

Please sign, date and return this verdict form to the clerk or court security officer.

Date: _____

FOREPERSON

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1. Do you find that Minor Asa I. Sullivan ("Minor Sullivan") proved by a preponderance of the evidence that the tenants, Jarrett Schank and Bryant Gudor, did not abandon their lease at 2 Garces Drive before June 6, 2006?

Answer "Yes" or "No": _____

If you answered "Yes" to Question 1, please proceed to Question 2. If you answered "No" to Question 1, please proceed to Question 6.

2. Do you find that Minor Sullivan proved by a preponderance of the evidence that Officer Morgado did not have reasonable grounds to believe that 2 Garces Drive had been abandoned and/or that the landlord, or an authorized agent of the landlord, did not consent to the entry and search?

Answer "Yes" or "No": _____

If you answered "Yes" to Question 2, please proceed to Question 3. If you answered "No" to Question 2, please proceed to Question 6.

3. Do you find that Minor Sullivan proved by a preponderance of the evidence that Mr. Sullivan had a legitimate expectation of privacy at 2 Garces Drive on June 6, 2006?

Answer "Yes" or "No": _____

If you answered "Yes" to Question 3, please proceed to Question 4. If you answered "No" to Question 3, please proceed to Question 6.

4. Do you find that Minor Sullivan proved by a preponderance of the evidence that the Officer Morgado did not have reasonable grounds to believe that there was an emergency at hand and there was an immediate need for their assistance for the protection of life or property and/or that the search's scope and manner were not reasonable to meet the need.

Answer "Yes" or "No": _____

If you answered "Yes" to Question 4, please proceed to Question 5. If you answered "No" to Question 4, please proceed to Question 6.

5. Do you find that Minor Sullivan proved by a preponderance of the evidence that Officer Morgado deprived Mr. Sullivan of his rights under the Fourth Amendment to the Constitution to be free from an unreasonable search when they entered and searched 2 Garces Drive?

Answer "Yes" or "No": _____

Please proceed to Question 6.

6. Do you find that Minor Sullivan proved by a preponderance of the evidence that Officer Morgado deprived Mr. Sullivan of his rights under the Fourth Amendment to the Constitution to be free from excessive force when he pointed his firearm at Mr. Sullivan?

Answer "Yes" or "No": _____

Please proceed to Question 7.

1 7. Do you find that Minor Sullivan proved by a preponderance of the evidence that
2 the Defendant Officers deprived Mr. Sullivan of his rights under the Fourth Amendment to the
3 Constitution to be free from excessive force when they when they used deadly force against Mr.
4 Sullivan?

5 Answer "Yes" or "No" for Officer Alvis: _____

6 Answer "Yes" or "No" for Officer Keesor: _____

7 **Please proceed to Question 8.**

8
9 8. **If you answered "No" to Questions 5 and 6, skip this Question and please**
10 **proceed to Question 9.** If you found that Officer Morgado violated Mr. Sullivan's Fourth
11 Amendment rights by the entry and search of 2 Garces Drive or by the pointing of firearms at
12 Mr. Sullivan, do you find that Minor Sullivan proved by a preponderance of the evidence that
13 Officer Morgado intentionally or recklessly provoked a violent response from Mr. Sullivan
14 when he violated his Fourth Amendment Rights.

15 Answer "Yes" or "No" : _____

16 **Please proceed to Question 9.**

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18 9. Do you find that Minor Sullivan proved by a preponderance of the evidence that
19 the Defendant Officers were negligent in their use of deadly force against Mr. Sullivan?

20 Answer "Yes" or "No" for Officer Alvis: _____

21 Answer "Yes" or "No" for Officer Keesor: _____

22 **If you answered "Yes" to Question 9 as to either Officer Alvis or Officer Keesor, please**
23 **proceed to Question 10. If you answered "No" to Question 9 as to both Officer Alvis or**
24 **Officer Keesor, please proceed to Question 12.**

25
26 10. Do you find that the Defendant Officers proved by a preponderance of the
27 evidence that Mr. Sullivan was negligent and Mr. Sullivan's negligence was a substantial factor
28 in causing his death.

1 Answer "Yes" or "No" _____

2 **Please proceed to Question 11.**

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4 11. What percentage of fault do you attribute to each person below? Your answer
5 may be zero.

6 Officer Alvis: _____

7 Officer Keesor: _____

8 Mr. Sullivan: _____

9 **Please proceed to Question 12.**

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11 12. If you found that Officer Morgado violated Mr. Sullivan's Fourth Amendment
12 rights by the entry and search of 2 Garces Drive and/or by the pointing of firearms at Mr.
13 Sullivan, and/or that Officer Alvis and/or Officer Keesor violated Mr. Sullivan's Fourth
14 Amendment rights by the use of deadly force against him, do you find that Minor Sullivan
15 proved by a preponderance of the evidence that the Defendant Officers intentionally interfered
16 with or attempted to interfere with Mr. Sullivan's civil rights by threatening or committing
17 violent acts.

18 Answer "Yes" or "No" as to Officer Morgado and the entry and search of 2 Garces Drive:

19 _____

20 Answer "Yes" or "No" as to Officer Morgado and the pointing of firearms at Mr. Sullivan:

21 _____

22 Answer "Yes" or "No" as to Officer Alvis and the use of deadly force:

23 _____

24 Answer "Yes" or "No" as to Officer Keesor and the use of deadly force:

25 _____

26 **Please proceed to Question 13.**

13. If you answered “Yes” to Questions 5, 6, 7, or 8 as to any Defendant Officer, what damages do you find that Minor Sullivan, as the successor-in-interest to Mr. Sullivan, proved by a preponderance of the evidence were caused by the Constitutional violation(s).

Damages : _____

If you answered “Yes” to Questions 5, 6, 7, or 8 as to any Defendant Officer, but found that Minor Sullivan failed to prove by a preponderance of the evidence that any actual damages were caused by the Constitutional violation(s), you shall return an award of nominal damages not to exceed one dollar.

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14. If you answered “Yes” to Question 12, what damages do you find that Minor Sullivan, as the successor-in-interest to Mr. Sullivan, proved by a preponderance of the evidence were caused by the violation.

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15. If you answered “Yes” to Question 9, what damages do you find that Minor Sullivan, as an individual, proved by a preponderance of the evidence were caused by the Defendant Officers’ conduct.

Damages : _____

Please sign, date and return this verdict form to the clerk or court security officer.

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FOREPERSON

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Defendants.

1. Do you find that Minor Asa I. Sullivan ("Minor Sullivan") proved by a preponderance of the evidence that the tenants, Jarrett Schank and Bryant Gudor, did not abandon their lease at 2 Garces Drive before June 6, 2006?

Answer "Yes" or "No": _____

If you answered "Yes" to Question 1, please proceed to Question 2. If you answered "No" to Question 1, please proceed to Question 6.

2. Do you find that Minor Sullivan proved by a preponderance of the evidence that Officer Morgado did not have reasonable grounds to believe that 2 Garces Drive had been abandoned and/or that the landlord, or an authorized agent of the landlord, did not consent to the entry and search?

Answer "Yes" or "No": _____

If you answered "Yes" to Question 2, please proceed to Question 3. If you answered "No" to Question 2, please proceed to Question 6.

3. Do you find that Minor Sullivan proved by a preponderance of the evidence that Mr. Sullivan had a legitimate expectation of privacy at 2 Garces Drive on June 6, 2006?

Answer "Yes" or "No": _____

If you answered "Yes" to Question 3, please proceed to Question 4. If you answered "No" to Question 3, please proceed to Question 6.

4. Do you find that Minor Sullivan proved by a preponderance of the evidence that the Officer Morgado did not have reasonable grounds to believe that there was an emergency at hand and there was an immediate need for their assistance for the protection of life or property and/or that the search's scope and manner were not reasonable to meet the need.

Answer "Yes" or "No": _____

If you answered "Yes" to Question 4, please proceed to Question 5. If you answered "No" to Question 4, please proceed to Question 6.

5. Do you find that Minor Sullivan proved by a preponderance of the evidence that Officer Morgado deprived Mr. Sullivan of his rights under the Fourth Amendment to the Constitution to be free from an unreasonable search when they entered and searched 2 Garces Drive?

Answer "Yes" or "No": _____

Please proceed to Question 6.

6. Do you find that Minor Sullivan proved by a preponderance of the evidence that Officer Morgado deprived Mr. Sullivan of his rights under the Fourth Amendment to the Constitution to be free from excessive force when he pointed his firearm at Mr. Sullivan?

Answer "Yes" or "No": _____

Please proceed to Question 7.

1 7. Do you find that Minor Sullivan proved by a preponderance of the evidence that
2 the Defendant Officers deprived Mr. Sullivan of his rights under the Fourth Amendment to the
3 Constitution to be free from excessive force when they when they used deadly force against Mr.
4 Sullivan?

5 Answer "Yes" or "No" for Officer Alvis: _____

6 Answer "Yes" or "No" for Officer Keesor: _____

7 **Please proceed to Question 8.**

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9 8. **If you answered "No" to Questions 5 and 6, skip this Question and please**
10 **proceed to Question 9.** If you found that Officer Morgado violated Mr. Sullivan's Fourth
11 Amendment rights by the entry and search of 2 Garces Drive or by the pointing of firearms at
12 Mr. Sullivan, do you find that Minor Sullivan proved by a preponderance of the evidence that
13 Officer Morgado intentionally or recklessly provoked a violent response from Mr. Sullivan
14 when he violated his Fourth Amendment Rights.

15 Answer "Yes" or "No" : _____

16 **Please proceed to Question 9.**

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18 9. Do you find that Minor Sullivan proved by a preponderance of the evidence that
19 the Defendant Officers were negligent in their use of deadly force against Mr. Sullivan?

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26 10. Do you find that the Defendant Officers proved by a preponderance of the
27 evidence that Mr. Sullivan was negligent and Mr. Sullivan's negligence was a substantial factor
28 in causing his death.

1 Answer "Yes" or "No" _____

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5 may be zero.

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16 with or attempted to interfere with Mr. Sullivan's civil rights by threatening or committing
17 violent acts.

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19 _____

20 Answer "Yes" or "No" as to Officer Morgado and the pointing of firearms at Mr. Sullivan:

21 _____

22 Answer "Yes" or "No" as to Officer Alvis and the use of deadly force:

23 _____

24 Answer "Yes" or "No" as to Officer Keesor and the use of deadly force:

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26 **Please proceed to Question 13.**

13. If you answered “Yes” to Questions 5, 6, 7, or 8 as to any Defendant Officer, what damages do you find that Minor Sullivan, as the successor-in-interest to Mr. Sullivan, proved by a preponderance of the evidence were caused by the Constitutional violation(s).

Damages : _____

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6. Do you find that Minor Sullivan proved by a preponderance of the evidence that Officer Morgado deprived Mr. Sullivan of his rights under the Fourth Amendment to the Constitution to be free from excessive force when he pointed his firearm at Mr. Sullivan?

Answer "Yes" or "No": _____

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2 the Defendant Officers deprived Mr. Sullivan of his rights under the Fourth Amendment to the
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FOREPERSON